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OFFICE OF PETITIONS

In re Application of :
Khan et al. : DECISION ON PETITION
Application No. 09/885,681 : TO WITHDRAW HOLDING OF
Filed: 20 June, 2001 : ABANDONMENT
Atty. Docket No. 4033/2A :

This is a decision on the petition, filed on 14 April, 2005 (certificate of mailing date 11 April, 2005), to withdraw the holding of abandonment in the above-identified application.

The Office apologizes for the delay in responding to the present petition.

The application was held abandoned for failure to respond in a timely manner to the non-final Office action mailed on 4 December, 2003. A Notice of Abandonment was mailed on 10 January, 2005.

Petitioners assert that a proper response was in fact timely filed in the form of an amendment and response to the non-final Office action and an extension of time. In support of the petition, petitioners submitted a copy of a date-stamped post card receipt acknowledging receipt of the response to the Office action dated 4 December, 2003, a request for a three (3) month extension of time, and a check for \$475.00 for the extension of time fee in the United States Patent and Trademark Office (Office) on 7 June, 2004. Additionally, petitioners have submitted a copy of the amendment and request for extension of time with the present petition.

Although receipt of the \$475.00 fee for the extension of time has been entered in Office financial records, no copy of the amendment or request for extension of time filed on 7 June, 2004 is located in the official file, petitioners' response to the restriction or election requirement is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers

which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the amendment and request for a three (3) month extension of time was received in the Office but was not matched with the application file.

The date-stamped on the post card of 7 June, 2004, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The "Amendment and Response to Office Action" filed with the present petition bears a proper certificate of mailing, dated 4 June, 2004, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file will be referred to the Technology Center's technical support staff for entry of the response. Thereafter, the application file will be referred to the examiner for action in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions